

REMARKS

I. Claim Amendments

The claims have been amended to more clearly define the invention and to remove the dependency of multiple dependent claims from other multiple dependent claims.

Applicants submit that no new matter has been introduced by any of the claim amendments or new claims.

II. Election/Restriction

A restriction requirement under 35 U.S.C. §§121 and 372 was issued. It is alleged that the subject application contains the following inventions or groups of inventions which are not so linked as to form a single general concept as required by PCT Rule 13.1:

Group I: claims 1-10, drawn to a laminate;

Group II: claims 11 and 26, drawn to a container;

Group III: claims 12-18 and 23, drawn to an assembly;

Group IV: claims 19-21 and 24, drawn to a storage package; and

Group V: claims 122 and 25, drawn to a process for forming a package.

With traverse, Applicants elect the invention of Group I for examination purposes.

III. Traversal of the Restriction Requirement

The subject application is the national stage application of international application PCT/SE98/01383, filed July 13, 1998. The claims of the subject national stage application, as originally filed, are either identical or substantially identical to the claims of the international

application which have been examined. The International Authorities were satisfied that the claims of the international application share a patentable special technical feature and, therefore, there was no determination of a lack of unity of invention. In support, Applicants concurrently submit an Information Disclosure Statement to which a copy of the International Preliminary Examination Report is attached.

Even though there was no holding of lack of unity of invention regarding the claims of the related international application, the Examiner alleges that the pending claims of the national stage application lack the same or corresponding patentable special technical feature under PCT Rule 13.2. As such, the Examiner concludes that the inventions listed as Groups I-V do not relate to a single inventive concept as required by PCT Rule 13.1.

In the first instance, Applicants repeat that there was no holding of lack of unity of invention upon examination of the claims in the related international application. It appears incongruous, therefore, that the Examiner has reached a different conclusion regarding unity of invention upon interpretation and application of the same PCT Rules 13.1 and 13.2 as embodied in 37 C.F.R. §1.475(a). Accordingly, Applicants respectfully submit that the Examiner is unfairly and unjustly applying a different standard in evaluating unity of invention in the national stage application than that standard which was applied in the related international application.

Secondly, according to PCT Rule 13.2 and 37 C.F.R. §1.475(a), the overriding criterion regarding unity of invention among a group of inventions is the existence of “a technical relationship among those inventions involving one or more of the same or corresponding special technical features”. The expression special technical feature means those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

In the subject national stage application, as well as the related international application, *the special technical feature which defines the contribution of each of the claimed inventions over the prior art is the use of a silicon oxide (SiO_x) containing laminate as a barrier to ethylene oxide gas*. Patentability is based on Applicants' unexpected discovery of the efficacy of a laminate having an intermediate layer of silicon oxide (SiO_x) as a barrier to ethylene oxide gas. In this regard, the Examiner's attention is directed to the specification at page 3, lines 4-14. Thus, the SiO_x-containing laminate of the claimed invention is especially useful in applications requiring the sterilization of medical instruments by ethylene oxide gas. The impermeability of the SiO_x-containing laminate prevents the reaction of ethylene oxide gas with fluids contained in a container made from the SiO_x-containing laminate.

Specifically, the invention of Group I relates to the use of a SiO_x-containing laminate in the manufacture of a barrier to ethylene oxide gas. Group II is directed to a container comprising the SiO_x-containing laminate of Group I. The assembly of Group III is comprised of the container of Group II made from the SiO_x-containing laminate of Group I. The storage package of Group IV is comprised of the assembly of Group III which includes the container of Group II made from the SiO_x-containing laminate of Group I. The invention of Group V is directed to a process for forming a storage package that contains a container having a SiO_x-containing laminate.

In summary, therefore, *each of the claimed inventions is characterized by the use of a SiO_x-containing laminate*. Accordingly, the restriction requirement is improper and should be withdrawn for the following reasons:

- There was no holding of lack of unity of invention by the International Preliminary Examining Authority upon examination of identical or substantially claims in the related international application.



- The novel and advantageous use of a container having a SiO_x-containing laminate as a barrier to ethylene oxide gas is the special technical feature linking the inventions of Groups I-V as well as defining the inventions of Groups I-V over the prior art; therefore, the requirements of PCT Rules 13.1 and 13.2 are satisfied.

CONCLUSION

It is submitted that Applicants have completely responded to the restriction requirement. For all of the foregoing reasons, withdrawal of the restriction requirement is deemed proper and hereby requested. By reason of their direct or indirect recitation of the silicon oxide containing laminate as a barrier to ethylene oxide gas, the claims are linked as to form a single general inventive concept. As such, the requirements of PCT Rules 1.31 and 13.2 and 37 C.F.R. §1.475 are satisfied.

Applicants respectfully submit that the claims are in condition for allowance, which action is earnestly solicited.

Any other fee due in connection with this Preliminary Amendment should be charged to Deposit Account No. 23-1703.

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Respectfully submitted,

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